Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM . . . . . 35 CENTS PER NUMBER.

Editorial Board.

JOSEPH P. COTTON, JR., *Editor-in-Chief.*
NORMAN B. BEECHER,
WALLACE B. DONHAM,
HENRY FLETCHER,
ROY C. GASSER,
FRANK E. HARKNESS,
GARDNER K. HUDSON,
SANFORD ROBINSON,
DEAN SAGE, JR.,
BRUCE WYMAN, *Treasurer.*
ROBERT B. STONE,
GRAHAM SUMNER,
FREDERIC R. TAYLOR,
EDWARD S. THURSTON,
JOSEPH WARREN,
BEEKMAN WINTHROP,
CLEMENT B. WOOD,
SYDNEY R. WRIGHTINGTON.

CONSTITUTIONALITY OF THE MASSACHUSETTS LAND REGISTRATION ACT. — The Torrens system of land registration has been in force in South Australia since 1856, in England since 1875, and later in several of the English colonies. Few landowners in England have taken advantage of it, — so that the introduction of it in Massachusetts by the Land Registration Act (in effect October 1, 1898) is an experiment. The system under that act attempts to provide for commercial certainty and commercial despatch in dealing with land titles. It provides that a landowner may, if he wishes, set in motion an examination of his title which, if satisfactory, will end in a registration of that title final against all the world. Adverse claims if presented are judicially tried, but notice of proceedings comes to possible claimants only as follows: if their addresses are known, by mail; if known by name, by publication in some newspaper of the district; and to the unknown and known, by conspicuous notice on the land.

In *Tyler* v. *Judges of the Court of Registration*, 55 N. E. Rep. 812 (Mass.), the system was held to be "due process of law" within that clause of the Massachusetts Bill of Rights and the Fourteenth Amendment. "Due process," as Mr. Justice Holmes says, refers to "somewhat vaguely determined criteria of justification which may be found in ancient practice, *Murray* v. *Hoboken Land Co.*, 18 How. 272, or which may be found in convenience and substantial justice though the form is new, *Hurtado* v. *California*, 110 U. S. 516." An act offends against "due process" only when it has the aspect of an encroachment on individual rights which may not be justified, rationally, on the ground that it is for the public good. There must be the aspect of arbitrariness. The question then substantially is, has this innovation bitten so deeply into the real property law as to be considered arbitrary. Before this act, under our systems of law, a claimant desiring certainty of title could

attain it only through the lapse of time, or by some statutory proceedings which needed the lapse of time to fortify it against collateral attack. And, again, he could bring other claimants into court only by regular personal service of process — at least if those other claimants were within the jurisdiction. The general method of procedure under this act is then novel — yet it is substantially the ordinary proceeding in actions *in rem*, as in admiralty. The act reorganizes a certain section of the law, provides an abbreviated way of settling certain controversies. It is quick, cheap, convenient, substantially fair — novel but not arbitrary. It would, it seems, be greatly to be regretted and most surprising if such an experiment in law-making may not be tried. The constitution clearly was not intended to crystallize the form of law. The Massachusetts court decided the case along such lines, and any attempt to reduce the question to petty and unstatesmanlike proportions — the case of *State* v. *Guilbert*, 56 Ohio St. 575, on the same question is typical of the modern attitude of many — is to be deprecated.

Two objections to the act, from the point of view of the public, suggest advisable amendment. First, the notice seems often inadequate, the publication is infrequent, and the space of time in which registration can be accomplished often short. Second, the act does away with the doctrine of prescriptive rights, and so most boundary blunders — where A has built his house six inches into B's lot, etc. — become incurable.

Fishing Vessels Exempt from Capture. — One of the legal outgrowths of the recent war with Spain is a noteworthy decision in international law. Two fishing vessels, owned by Spanish subjects of Cuban birth, were captured off Havana, were libelled and condemned in the District Court, on the ground that, in the absence of any ordinance, treaty, or proclamation, such vessels were not exempt from seizure as prize of war. A proclamation of the President, published some days before, had announced that the war would be conducted according to the principles of international law, but made no specific exemption of fishing boats. Upon appeal to the Supreme Court, it was held to be a rule of international law, developed gradually from an ancient usage among civilized nations, that coast fishing vessels employed in catching and bringing in fresh fish, together with their cargoes and crews, were exempt from capture. The chief justice and two others dissented, mainly on the ground that this exception was rather an act of grace than a matter of right, and should not be allowed in this case as it was not specially provided for in the President's proclamation. *The Paquete Habana, The Lola*, Supreme Court of the United States, October Term, 1899, manuscript.

Upon this question there are not many judicial decisions. The French tribunals, as well as nearly all the authoritative writers on the subject, have long considered the exception as a settled rule of international law. In the leading English case, however, a hostile fishing vessel was condemned; and although this action was in pursuance of a royal decree, Lord Stowell remarked in rendering judgment that the exemption was "a rule of comity only and not of legal decision." *The Young Jacob and Johanna*, 1 C. Rob. 20. Yet that was said a hundred years ago, and the majority in the principal case would seem to be right in the conclusion that what was then only a usage has now crystallized into an acknowl-